

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1358 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVLAL MOTICHANG SHETH

Versus

MUKTABEN A. DIED BY HER HEIRS INDUKUMAR BALARAM BHATT

Appearance:

MR SURESH M SHAH for Petitioner

MR HV THAKOR for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original defendant of Civil Suit No.239/81. The aforesaid suit was filed by the respondents - plaintiffs in the Small Causes Court at Rajkot for getting the possession of the suit premises from the defendant. It

is the case of the plaintiffs in the said suit that the suit premises was given on rent to the defendant at the rate of Rs.70/- per month. However, subsequently, the defendant has acquired the suitable residence situated at Vardhmannagar area. The said house is purchased by him in the name of his wife. He, alongwith his family members have shifted to the said premises and the suit premises is kept closed and it is not used. The plaintiffs, therefore, served the notice to the defendant on 17.6.1981 asking him to vacate the suit premises. But, the defendant gave evasive reply, and therefore, the aforesaid suit was filed by the plaintiffs for getting the decree for possession from the defendant.

#. The defendant resisted the said suit by filing written statement at Exh.8. It was contended by him that his family is big and since it was not possible for him to accommodate all the family members in the rented premises, some of the family members were shifted to Vardhmannagar house and some of the family members continued to stay in the suit premises. He denied the case of the plaintiff regarding nonuse of the suit premises.

#. The learned trial Judge framed various issues at Exh.10 and after recording the evidence and hearing the arguments of both the parties, came to the conclusion that the defendant has required suitable alternative accommodation as contemplated by Section 13(1)(1) of the Bombay Rent Act. The learned trial court also found that the suit premises is not used by the defendant. The trial court, accordingly, decreed the suit for possession.

#. The aforesaid decree of the learned trial court was challenged by the tenant by filing Civil Appeal No.186/82. The aforesaid appeal was heard by the learned District Judge, Rajkot, who ultimately by his order dated 10.8.1984 dismissed the said appeal with costs.

#. The aforesaid decree of the appellate court is challenged by the tenant in this civil revision application.

#. The appellate Judge has considered the question about alternative accommodation acquired by the defendant in great detail. It is found by the appellate court that, the plaintiff has examined one Vaikunthrai Balaram Bhatt at Exh.24. The appellate court further found that said Vaikunthrai Balaram Bhatt is the son of the plaintiff landlady. That he was managing the affairs of the suit

property, and therefore, he was entitled to give evidence as he is having personal knowledge about the fact whether the suit property is used or not. It is the case of the plaintiff that the defendant has purchased the house in the name of his wife and all the family members have shifted there. The learned appellate Judge has appreciated the evidence led on behalf of the plaintiff. The evidence of the plaintiff's witness Mayashanker at Exh.43 is also considered by the appellate court in coming to the conclusion that the tenant has shifted to the new premises. The learned appellate Judge has considered the documentary evidence in the form of electricity bills which show that, there was practically no consumption so far as the rented premises is concerned. The defendant has not used the electricity at all for a long period from October 1979 to August, 1981. Considering the aforesaid evidence on record, it has been found by the appellate court that the defendant has not used the suit property for a long period. The aforesaid finding of fact is based on the appreciation of the evidence, and therefore, it is not possible to take different view then the one reached by the courts below and it is clear that the defendant has not used the suit premises before six months prior to the filing of the suit.

#. In fact, from the evidence on record, it is also clear that the defendant has purchased or built the new premises in the name of his wife. The acquisition of premises by wife can also be considered as acquisition by the tenant in view of the settled legal position. There is nothing on record to show that the tenant was not staying with his wife or that there was dispute between them, and therefore, naturally, when both i.e. the tenant and his wife are residing together, then naturally, even if, the tenant has purchased the house in the name of his wife, or even if his wife has purchased the same on her own would not make any difference insofar as the decree under section 13(1)(1) is concerned. Though, of course the aforesaid point regarding the acquisition by the wife cannot be said to be acquisition by the tenant is not pressed before the appellate court by the tenant as observed by the appellate Judge in para 22 of his judgment. The learned appellate Judge has also given detail finding in para 23 of his judgment as to how alternative premises is suitable for the residence of the defendant.

#. In view of the evidence on record and in view of the aforesaid reasonings, it is clear that, the tenant has acquired suitable residential accommodation, and

therefore, the appellate court has not committed any error of law in confirming the decree for possession under section 13(1)(l) of the Bombay Rent Act so far as the acquisition of alternative premises is concerned.

#. In view of what is stated above, I do not find any substance in this civil revision application and accordingly the same is required to be dismissed. Accordingly, Civil Revision Application is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

(P.B.Majmudar,J.)

(pathan)